

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

SEAN BAUER, GIOVANNI BROWN,)	C.A. No.: <u>2:21-cv-02952-DCN</u>
ALEXIS CHAVEZ, TEDDY GORMAN)	
HAMPTON JENKINS, SARAH MIDGETT,)	
PATRICK NORWOOD, JAMES ROMER,)	
MICHAEL SALVO, DONAVAN SNOVEL,)	
JAMES STEWERT, HOWARD THOMAS, IV,)	
PAUL WATSON and ALEX WILKINSON,)	NOTICE OF REMOVAL
)	
Plaintiffs,)	
vs.)	
R. KEITH SUMMEY, in his official and)	
individual capacities, CITY OF NORTH)	
CHARLESTON,)	
)	
Defendants.)	
)	

TO: The Honorable Judges of the United States District Court for the District of South Carolina

Defendants R. Keith Summey (“Mayor Summey”) and City of North Charleston (the “City”) (collectively “Defendants”) file this Notice of Removal to remove this action from the Court of Common Pleas for the Ninth Judicial Circuit for the State of South Carolina to this Court pursuant to Rule 28 U.S.C. §§ 1331 and 1441(c). In support of this Notice, Defendants would show the following:

I.

On September 13, 2021, Plaintiffs filed an action in the Court of Common Pleas for the Ninth Judicial Circuit, State of South Carolina, captioned “*Sean Bauer, Giovanni Brown, Alexis*

Chavez, Teddy Gorman, Hampton Jenkins, Sarah Midgett, Patrick Norwood, James Romer, Michael Salvo, Donavan Snovel, James Stewart, Howard Thomas, IV, Paul Watson and Alex Wilkinson., vs. R. Keith Summey, in his official and individual capacities, and City of North Charleston,” and designated Case No.: 2021-CP-10-04222. (Exhibit A.) Defendants accepted service of the Summons and Complaint on September 13, 2021. Additionally, Plaintiffs filed, but have not served, a Motion for Temporary Injunction and Restraining Order on September 13, 2021. (Exhibit B.)

II.

The action referred to in Paragraph I is a civil action over which this Court has original and removal jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1441 (a) and (c). The Complaint alleges violations of the United States Constitution, and the Complaint specifically seeks the Court’s order ruling that the subject executive order “violates Plaintiffs’ rights to free speech under the United States Constitution,” “violates the grant of equal protection under the law in the United States Constitution,” and “deprives Plaintiffs of their employment without due process of law in violation of the United States Constitution.” Complaint at ¶ 11; *see also*, Complaint at ¶ 36 (executive order violates Article XIV Section 1 of the U.S. Constitution).

Further, Plaintiffs allege their claims rely, in part, on the immunities of the federal Public Readiness and Emergency Preparedness Act (the “PREP Act.”), in particular the Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against Covid-19 (the “Declaration”), as amended, issued March 17, 2020. *Id.*; *see also* Complaint at ¶¶ 37-38. Because of the short history of the PREP Act, and more particularly the Declaration, there is no developed body of law for a state court to rely upon in interpreting,

construing, and applying it, and any interpretation of the PREP Act, including the Declaration, should come from the federal court system.

Similarly, adjudication will require interpretation and application of the recently announced federal vaccine mandates for all employers with more than 100 employees. Finally, this Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1337.

III.

This Notice of Removal has been filed within thirty (30) days after the earliest date of service of the Summons and Complaint, and the time for filing this Notice of Removal pursuant to 28 U.S.C. § 1446(b) has not expired.

IV.

Written notice of the filing of this Notice of Removal will be promptly served on counsel for Plaintiffs.

V.

A true and correct copy of this Notice of Removal will be filed with the Clerk of Court of Common Pleas for the Ninth Judicial Circuit, State of South Carolina, as provided under 28 U.S.C. § 1446(d).

WHEREFORE, Defendants remove this action to this Court's jurisdiction.

s/Caroline Wrenn Cleveland
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ATTORNEYS FOR R. KEITH SUMMEY
AND CITY OF NORTH CHARLESTON

September 14, 2021
Charleston, South Carolina

CERTIFICATE OF SERVICE

This is to certify that I have this date caused to be served a copy of Defendants' Notice of Removal on counsel for Plaintiff by depositing same in the United States Mail, First Class postage prepaid, and addressed to:

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September 14, 2021
Charleston, South Carolina